Preserving special places for special people

CONSERVATION EASEMENTS

A HANDBOOK FOR MISSISSIPPI LANDOWNERS

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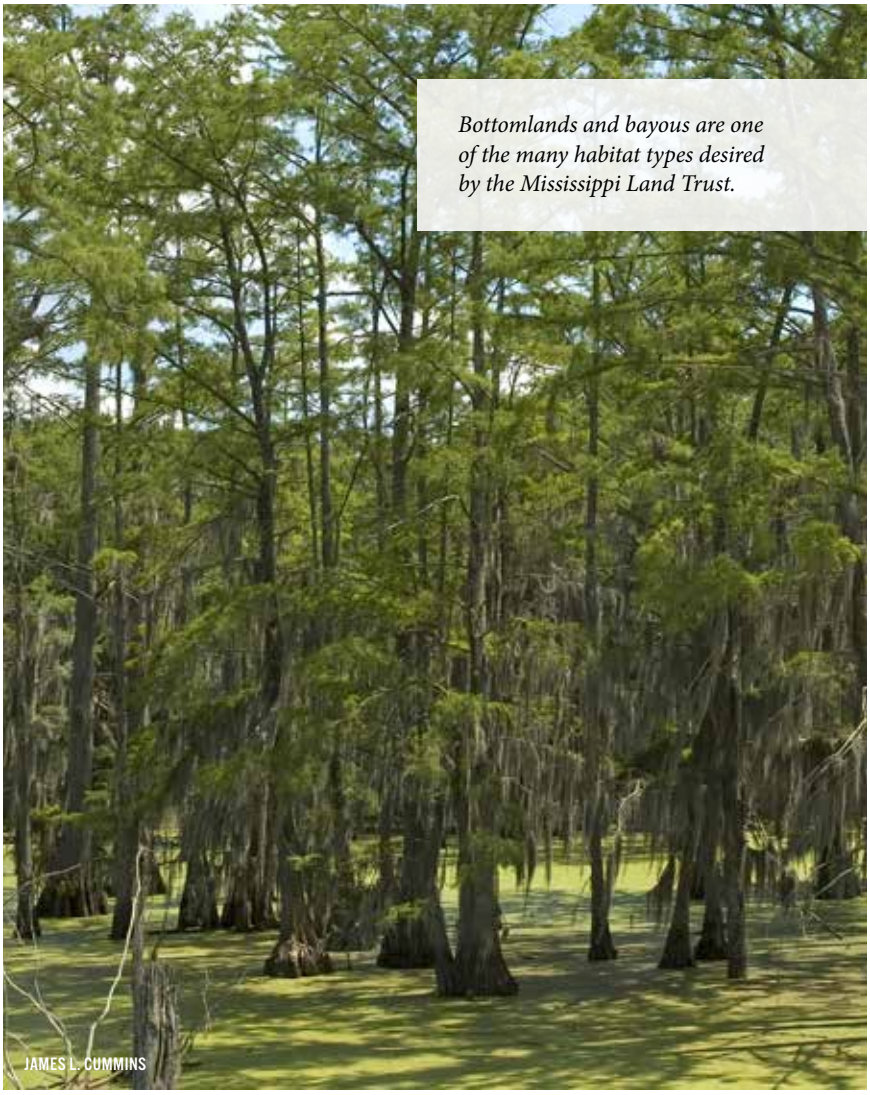
Mississippi's economy has grown significantly in the past few years. Our state economy continues growing, attracting new businesses, residents, and visitors.

Our rich history, prairies, red clay hills, bottomlands and bayous, coastal savannas, longleaf pine forests, and scenic rivers and streams appeal to residents, visitors, and businesses alike. We must work to preserve these unique features in our state.



Bottomlands and bayous are one of the many habitat types desired by the Mississippi Land Trust.

JAMES L. CUMMINS

Our Changing Landscape

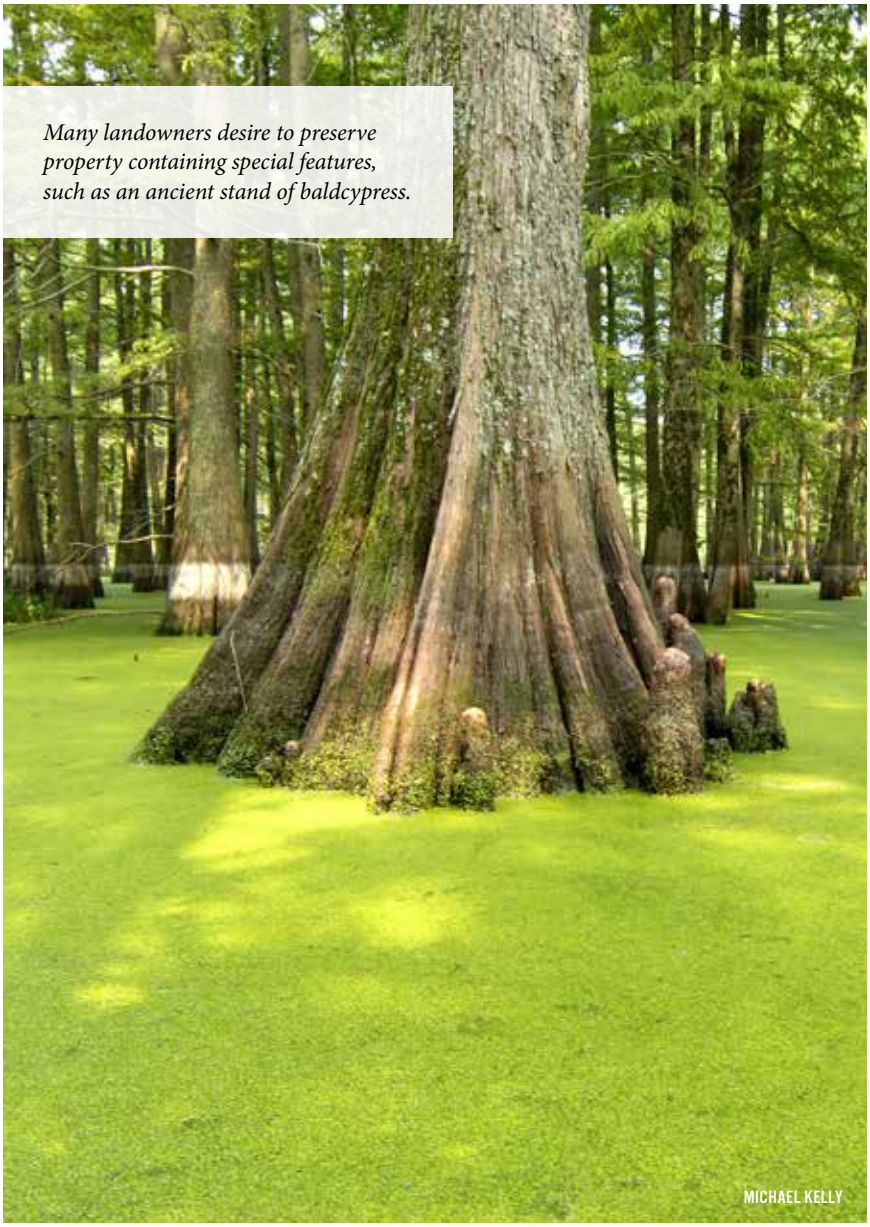
Today, about 75% of the land in Mississippi is privately owned. This land is filled with family farms, pastures, and forests. But the Mississippi landscape is changing. More Mississippians are choosing to live in cities and towns.

As the number of people living in cities grows, more forests and farms are being developed. Wildlife habitats and scenic open spaces are displaced as the land is developed.

Your land is more than a financial asset. It's a part of your family history–it contributes to your sense of community and state pride.

Passing on your family farm to the next generation is a time-honored tradition in Mississippi. However, the high cost of estate taxes may force your heirs to sell all or part of the family farm.

The loss of these family farms is a significant factor in the changing Mississippi landscape.



Many landowners desire to preserve property containing special features, such as an ancient stand of baldcypress.

MICHAEL KELLY

Protecting Land with Conservation Easements

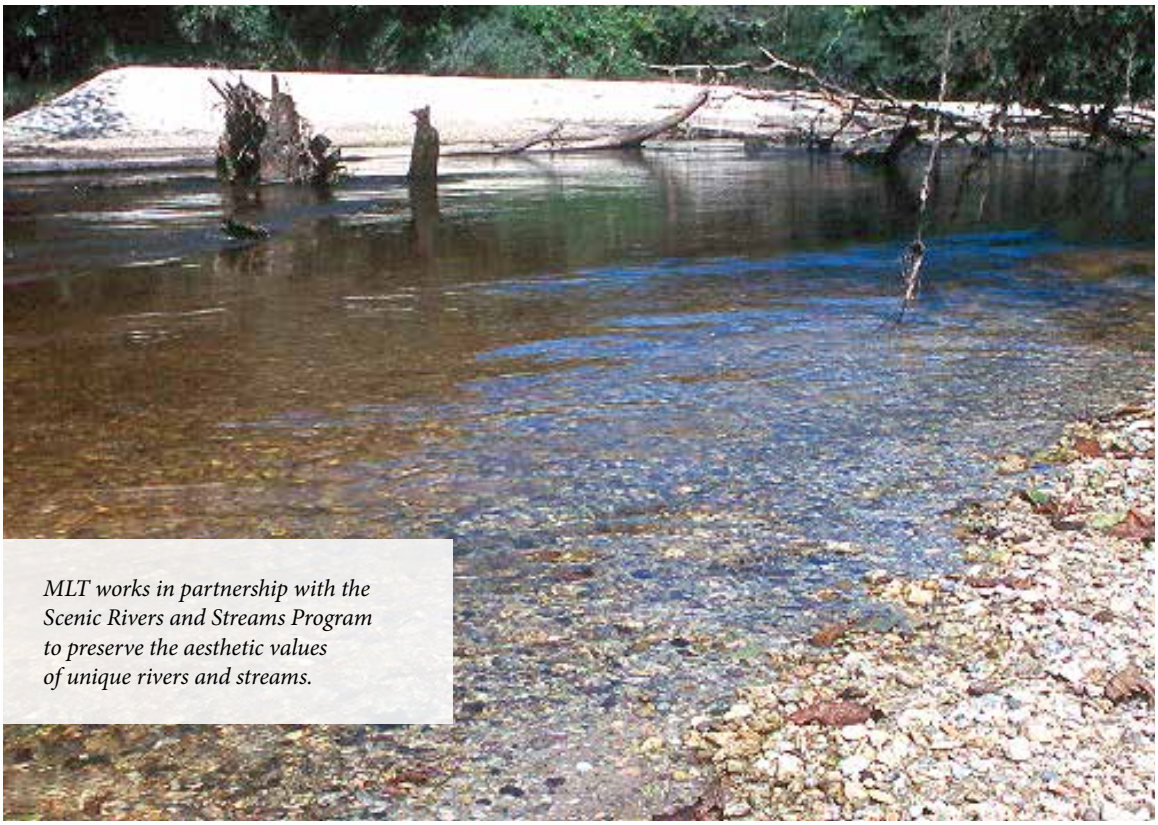
A conservation easement can help protect your land, wildlife habitat, scenic areas, or historic buildings. It's an alternative to selling the land for development.

A conservation easement is a legal agreement ensuring your property will be managed according to your wishes. With an easement, you retain ownership of the land, and you may qualify for tax benefits.

Conservation easements can be customized to meet a landowner's needs, whether you own 5 acres or 3,000 acres.

This booklet helps Mississippi landowners understand conservation easements. A conservation easement is one of the most flexible and effective means of conserving and protecting private property.

Best management practices are used on conservation easements for sustainable forest management.



MLT works in partnership with the Scenic Rivers and Streams Program to preserve the aesthetic values of unique rivers and streams.

Who We Are

The Mississippi Land Trust (MLT) is a charitable, non-profit organization. Since 2000, we have been working with private landowners who want to find ways to preserve Mississippi's landscape.

We cooperate with other land trusts, government agencies, and conservation organizations to help us meet our goals.

OUR GOALS

- To improve Mississippi's fish, wildlife, and plant resources
- To acquire and hold title to land and conservation interests in land in the state of Mississippi
- To educate the public about fish, wildlife, and plant conservation
- To encourage the public to be responsible stewards of Mississippi's natural resources
- To develop incentive-based conservation programs
- To ensure conservation programs in Mississippi are effective and cost-efficient
- To educate the public about the conservation options available to private landowners

OUR SERVICES

The MLT works jointly with private investors, private landowners, and government agencies to protect fish and wildlife habitat throughout Mississippi.

Our services include

- advising landowners on the conservation strategies appropriate for their goals and objectives
- designing, holding, and monitoring conservation easements to protect fish and wildlife habitat from undesirable activities

What is a Conservation Easement?

A conservation easement is a legal agreement between the person who owns the land and a non-profit conservation organization (often called a land trust) or a government agency.

The non-profit organization or government agency is designated as the "holder" of the easement. This organization or agency is responsible for periodically inspecting the property to ensure that the easement terms are being met.

There are a few things to know about a conservation easement:

- It is voluntary.
- It is a written legal agreement signed and recorded in the county of record.
- It restricts certain types of land uses (determined by the landowner).
- It protects natural, productive, or cultural features.
- The landowner retains the legal title to the land.
- The easement must be permanent (in perpetuity) to obtain any federal tax benefits.
- Unless specifically written into the easement, your property does not become open to the public.
- There are potential tax benefits.
- Not all land qualifies for a conservation easement.

In a conservation easement, the landowner decides which land uses to allow or restrict on his/her property. For example, the right to subdivide the property or the right to develop the parcel may be limited or given up.

Mississippi and the Internal Revenue Service (IRS) recognize conservation easements for legal and tax purposes (Internal

With a conservation easement, the landowner retains legal title to the property and decides what restrictions to place on how the land is used.

Revenue Code (IRC), Section 170(h)). However, landowners should consult with their legal and tax advisors before initiating a conservation easement.

Reasons to Use a Conservation Easement

A conservation easement is one of the most owner-friendly conservation management tools a private landowner can use. It is an increasingly important tool in the effort to protect and conserve significant habitat types and open spaces.

While easements provide potentially substantial federal tax benefits, the attempt to obtain a tax benefit should never be the primary reason for granting a conservation easement.

Reasons to use a conservation easement include

- to preserve or promote a conservation ethic on your property
- to protect special features of your property such as mature trees, wildlife habitat, or historical significance
- to maintain the productivity of your land
- to reduce your tax burden

While the potential tax benefits should never be the primary reason for granting a conservation easement, estate taxes, property taxes, and the financial incentive to sell or develop are all factors that affect land-use decisions.

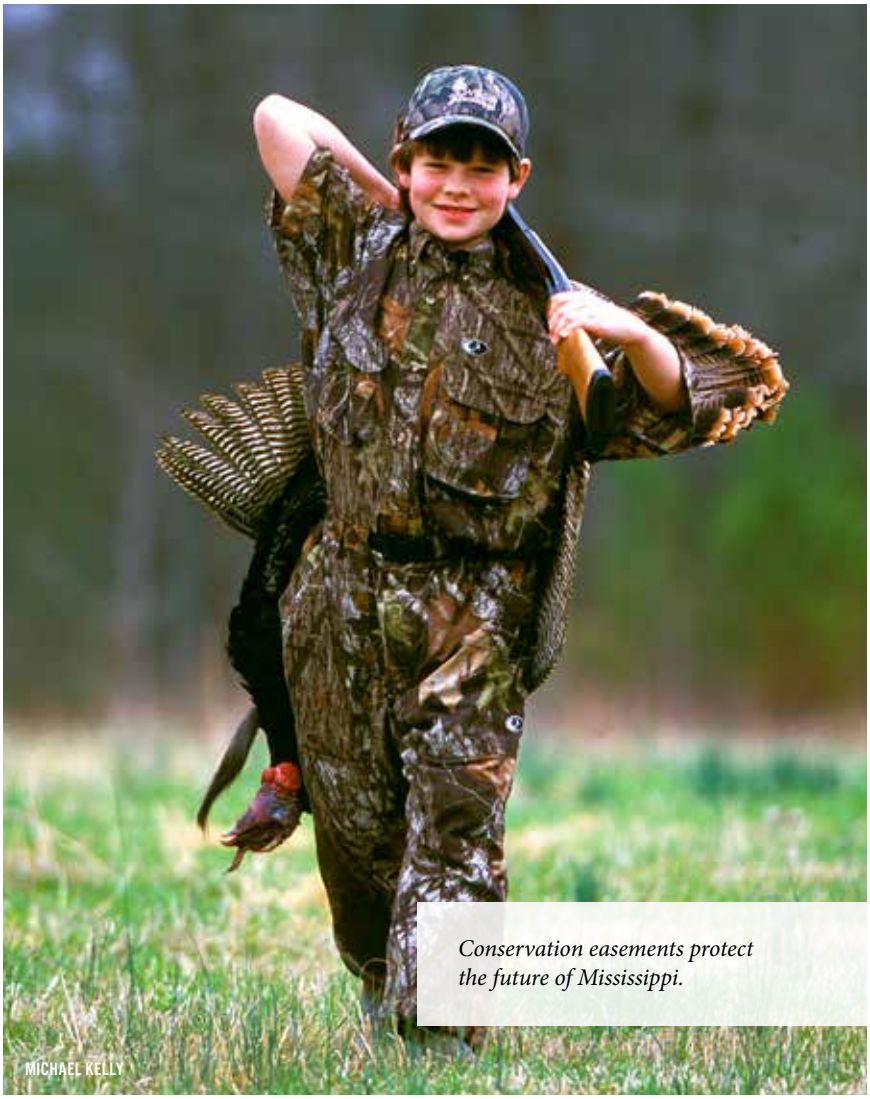
The federal government recognizes the potential benefit to the public of a conservation easement and, through the IRS, offers substantial tax deductions that a landowner may qualify for.

Protecting mixed stands of upland hardwoods and pine is a priority of the Mississippi Land Trust.

MICHAEL KELLY

Habitats with significant conservation purpose include bottomland hardwood forests, longleaf pine forests, native prairies, red clay hills, bayous, coastal savannas, scenic rivers and streams, and more.

BRUCE REID



Conservation easements protect the future of Mississippi.

MICHAEL KELLY

Requirements of a Conservation Easement

There are several requirements of a conservation easement. These include

1. The easement must have a significant conservation purpose.
2. The easement must be granted to or held by a "qualified conservation organization" that will monitor the property.
3. The property's current conditions must be recorded with a baseline ecological assessment.
4. The property value must be determined through an appraisal.
5. A legal survey of the property must be completed.

Hunting clubs have found the conservation easement to be a practical tool to protect habitat.

MICHAEL KELLY

SIGNIFICANT CONSERVATION PURPOSE

To qualify as a significant conservation purpose, the easement must protect or restore habitat types established as national priorities and funded by incentive programs such as

- Partners for Fish and Wildlife Program
- Wetland Reserve Easement (WRE)
- Healthy Forests Reserve Program
- Environmental Quality Incentives Program (EQIP)
- Conservation Stewardship Program (CSP)
- Agricultural Land Easement (ALE)
- Conservation Reserve Program (CRP)
- North American Waterfowl Management Plan
- A state's Comprehensive Wildlife Conservation Strategy

These habitats include bottomland hardwood forests, longleaf pine forests, native prairies, red clay hills, bayous, coastal savannas, scenic rivers and streams, and more. Properties with historical importance or certified historic structures may be included as well. See pages 26 - 30 for more information on significant habitat types that need protection.

QUALIFIED CONSERVATION ORGANIZATION

A qualified conservation organization is defined by law to include specific local, state, or federal government agencies whose primary purpose is the conservation of natural resources.

Publicly supported, private conservation organizations such as the Mississippi River Trust, Wildlife Mississippi, or the MLT are also qualified.

The landowner chooses the organization that will hold the easement. The conservation organization then has the right and responsibility to monitor and enforce the restrictions placed on the property to ensure that the terms of the easement are being met.

The restrictions on the property must be clearly defined in the easement document.

Conservation easements do not allow public access to the property unless it is expressly provided for in the easement.

The easement document does not allow the organization that holds the easement to exercise any rights that the landowner has chosen to restrict. For example, the public will not have access to your property unless you expressly grant the public access to it.

BASELINE ECOLOGICAL ASSESSMENT

Typically, resource professionals experienced in ecological progression and the related plant, animal, and natural geographic features conduct the baseline ecological assessment.

The baseline ecological assessment establishes and records the property's condition and the land uses that exist when the conservation easement is established.

The conservation organization or land trust that holds the easement will use this baseline assessment to monitor the property.

APPRAISAL

A conservation easement's monetary value is determined by a competent real estate appraiser who has experience with conservation easements. This professional appraises the property with and without the easement.

Appraisers must demonstrate to the landowner that they are qualified under the law and any Treasury Regulations or guidance that may exist. The qualified appraiser must demonstrate verifiable education and experience in valuing the type of property subject to the appraisal.

Conservation easements in areas where development pressure is intense have a higher value than those in remote areas. Likewise, a conservation easement that prohibits any development will have a higher value than an easement that permits a property to be divided or developed.

This value of the easement is determined by subtracting the value of the property with the easement from the value of the property without the easement.

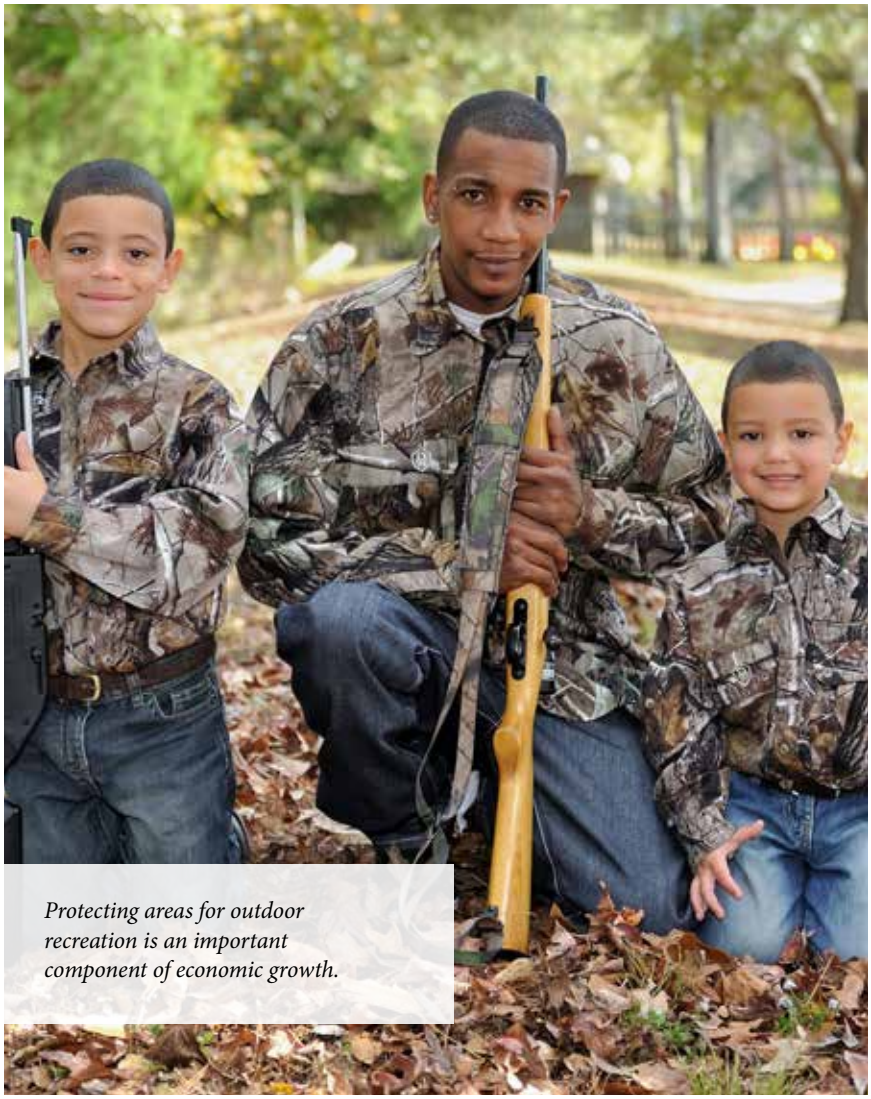
Value of easement = (property value) – (property value with easement)

The value of the easement is considered a donation or charitable contribution for income tax purposes. An easement may reduce the value of the property in the landowner's estate, which will also reduce the amount of estate taxes that will be paid.

A tract of land may be worth $120,000 as a potential residential development but worth only $20,000 as open space or recreational property. If a landowner donates a conservation easement to a land trust that prohibits new construction on their property, they make a charitable contribution of $100,000. The landowner may then be eligible for up to $100,000 in federal income tax deductions.

SURVEY

A competent surveyor familiar with conservation easements defines the boundaries of a conservation easement. The survey may include an existing boundary reconciliation, recordation, and written descriptions.



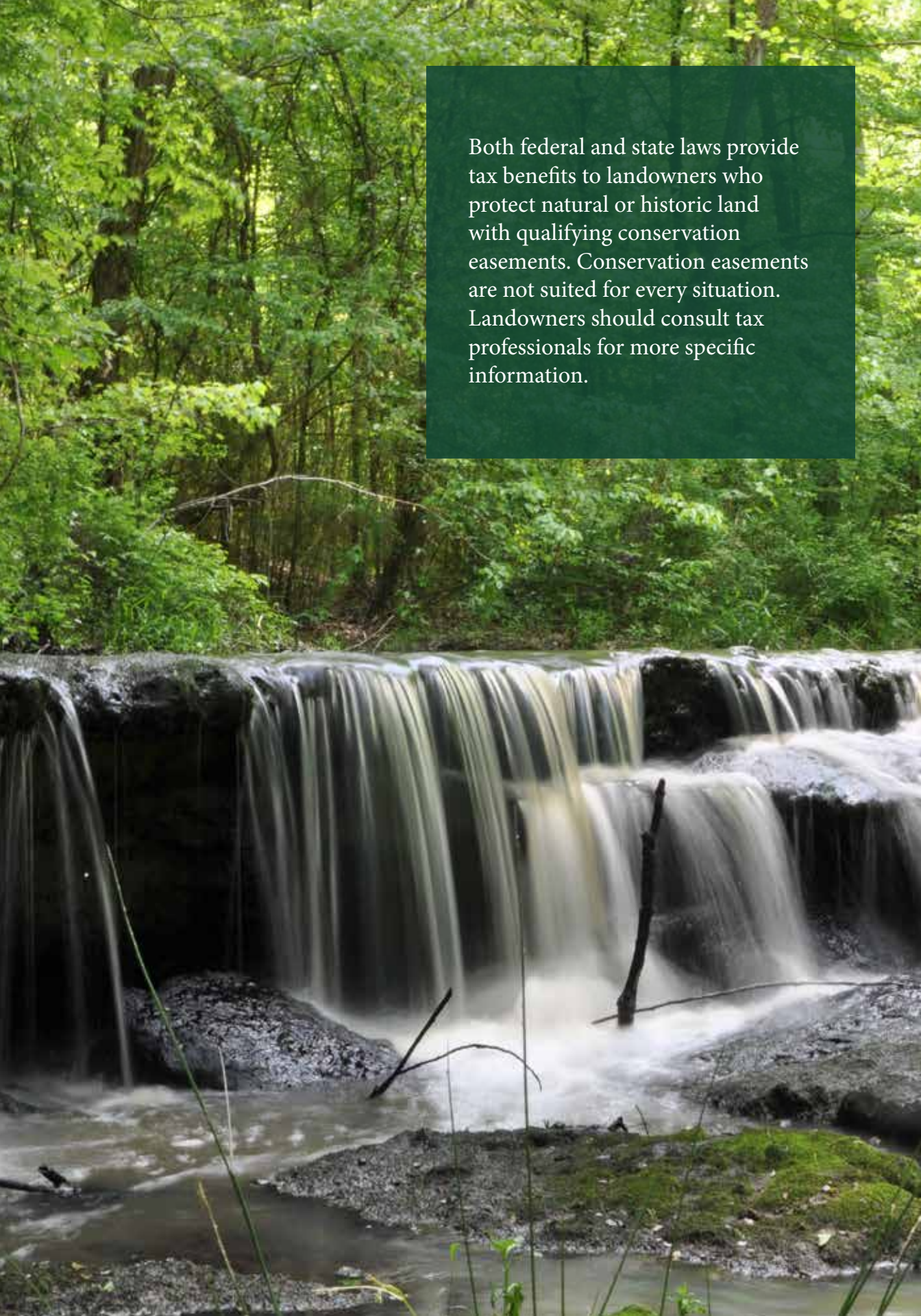
Protecting areas for outdoor recreation is an important component of economic growth.

Financial Benefits of Conservation Easements

REQUIREMENTS TO QUALIFY AS A CHARITABLE CONTRIBUTION

To qualify as a charitable contribution, a conservation easement must meet several requirements:

- The easement is granted in perpetuity.
- The easement is granted to a qualified organization, either
  - a non-profit, 501(c)(3) charitable organization (i.e., a land trust) with a conservation purpose and the means to enforce the easement, or



Both federal and state laws provide tax benefits to landowners who protect natural or historic land with qualifying conservation easements. Conservation easements are not suited for every situation. Landowners should consult tax professionals for more specific information.

  - a local, state, or federal public agency.
- The easement achieves at least one of the following:
  - It preserves land for public outdoor recreation or education.
  - It protects relatively natural habitats of fish, wildlife, or plants.
  - It preserves open space, including farms, ranches, or forests, either for scenic enjoyment or in keeping with an adopted public policy (such as a local open space plan).
  - It preserves historically important land or certified historic structures.
- The easement must have a significant conservation purpose. See the section entitled "Significant Habitat to Protect" on pages 26 - 30.

A tax deduction for a donated conservation easement cannot be taken if the conservation easement was granted as part of a quid pro quo agreement.

For example, a tax deduction cannot be taken if a conservation easement is required to be placed on land used for wetlands mitigation.

REQUIREMENTS TO QUALIFY FOR FEDERAL INCOME TAX BENEFITS

To qualify for a federal income tax deduction, these instruments usually need to be prepared for a conservation easement:

- the conservation easement document
- an inventory (including photographs) of the property's condition at the time of donation listing artificial structures, water resources, agricultural features, and significant ecological features
- a qualified appraisal of the conservation easement prepared by an independent real estate appraiser working for the donor completed no more than 60 days prior to the donation and no later than the time the tax return claiming the deduction is filed
- a title report, copy of the deed, and copies of any mortgages with subordination agreements from the mortgage holder
- a legal land survey
- IRS Form 8283 (an attachment to the federal income tax return of anyone claiming charitable contributions of more than $5,000)

VALUE OF THE FEDERAL INCOME TAX DEDUCTION

The federal income tax benefits of donating a conservation easement are like those of other charitable contributions. A landowner may deduct up to the full value of the conservation easement from their federal income taxes.

Tax laws require that a qualified appraiser determine the conservation easement's value. See page 12 for information on the appraisal.

If the conservation easement meets IRS criteria, the landowner may deduct the full value of the conservation easement donation from their adjusted gross income, up to 50% of the landowner's income for the year of the gift.

If the donation exceeds this amount in the year of the donation, the donation balance may be deducted for up to 15 succeeding years, subject to the same 50% limitation. However, qualifying farmers and ranchers can deduct up to 100% of their income.

A farmer or rancher is seomeone who receives more than 50% of their income from the trade or business of farming. The law references an estate tax provision (IRC 2032A(e)(5)) to define activities that count as farming. Specifically, those activities include

- cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm
- handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm

regularly produces more than one-half of the commodity so treated

- the planting, cultivating, caring for, or cutting of trees, or the preparation (other than milling) of trees for market

The qualified farmer or rancher provision also applies to farmers organized as C corporations. For an easement to qualify for the special treatment, it must contain a restriction requiring that the land remain available for agriculture or silviculture.

A landowner with a $100,000 adjusted annual income might donate a conservation easement worth $575,000 to a land trust. The landowner could deduct 50% of his or her $100,000 income, or $50,000, in each of years 1 through 11 and the remaining $25,000 in year 12. One can never deduct more than the fair market value of the gift.

Conservation easements may be phased on portions of a property over time, should the value of the charitable donation exceed a landowner's ability to use the income tax deduction over the allowed 16 years. Subject to certain limitations, some of the expenses incurred by a landowner in the donation process, including the costs for appraisals, baselines, surveys, legal review, and title insurance, can also be tax deductible.

REQUIREMENTS TO QUALIFY FOR FEDERAL ESTATE TAX BENEFITS

Landowners must donate the conservation easement during their lifetime or in a legal will to realize estate tax benefits. Heirs cannot donate easements to avoid payment of estate taxes.

A landowner intending to convey a conservation easement by a will must contact the potential holder to ensure that the organization will accept the donation.

VALUE OF THE FEDERAL ESTATE TAX DEDUCTION

To calculate the value of inherited property for estate taxes purposes, federal law requires that the value of the land be based on that property's "highest and best use" instead of actual use.

For example, a landowner might own a small family farm near a growing city which might be more valuable as residential development. When the landowner dies, taxes on the property will be based on the land's value as potential home sites, even if the heirs do not intend to develop the land for home sites.

A conservation easement can place restrictions on the use of a property that limits its "highest and best use." Because the property's "highest and best use" is restricted, its value and estate taxes are reduced accordingly. As noted earlier, there are limits on the income tax deduction for a conservation easement donation, but there are no such limits for estate tax purposes. Therefore, the savings on estate taxes can be substantial.

A widowed landowner purchased property 30 years ago that has appreciated significantly.

ESTIMATED FEDERAL ESTATE TAXES FOR AN INDIVIDUAL

Estate Value	Estate Taxes Due (2022)
$2,500,000	0
$5,000,000	0
$7,500,000	0
$10,000,000	0
$12,500,000	$135,400
$15,000,000	$1,121,800
$17,500,000	$2,121,800
$20,000,000	$3,121,800

EFFECTS OF EASEMENT ON ESTATE TAXES FOR HEIRS

	Without Easement	With Easement
Land Value	$3,500,000	$500,000
Other Valuable Assets	$10,000,000	$10,000,000
Total Taxable Estate	$13,500,000	$10,500,000
Total Federal Estate Taxes	$521,800	0

The property, located near a growing suburban community, has a current fair market value of $3,500,000. The landowner donates a conservation easement to a local land trust that reduces the property's value to $500,000. Assuming the landowner has $500,000 in taxable assets in addition to the property and that no prior taxable gifts have been made, the effect of the conservation easement on estate taxes for heirs would be as seen in the table above.

FEDERAL FILING REQUIREMENTS

Depending on the circumstances, persons or organizations making donations of property or conservation easements may need to include a qualified appraisal of the conservation easement with their tax return.

A qualified appraisal is one that

- relates to an appraisal that is made no earlier than 60 days prior to the date of donation of the conservation easement and not later than the due date (including extensions) of the return on which a deduction for the conservation easement is first claimed
- is prepared, signed, and dated by a qualified appraiser
- includes a description of the property appraised, the fair market value of the property on the date of the donation of the conservation easement and the specific basis for the valuation, a statement that such appraisal was prepared for income tax purposes, the qualifications of the appraiser, and the signature and taxpayer identification number of the appraiser

STATE INCOME TAXES

In addition to a landowner being able to deduct up to the full value of the conservation easement from their state income taxes, Section 27-7-22.21 of the Mississippi Code of 1972 provides for a state income tax credit for donations of land or interest in land considered a priority site by the Mississippi Natural Heritage Program or lands along or adjacent to streams listed on the Mississippi Scenic Streams Stewardship Program.

The credit assists landowners with the costs associated with the placement of a conservation easement on their properties. Allowable costs include

- costs for the appraisal
- costs for the baseline survey of flora and fauna located on the site
- engineering and surveying fees
- maintenance fees
- monitoring fees
- legal fees

A landowner may use the tax credit to cover up to 50% of the allowable transaction costs (not to exceed $10,000) associated with the conservation easement donation for the tax

year in which the allowable transaction costs occurred. Any unused credit may be carried forward for 10 succeeding tax years.

LOCAL PROPERTY TAXES

Conservation easements may reduce property taxes. However, property taxes on agricultural land are reduced because they are based on a property's productivity rather than fair market value.

Conservation easements on land not classified as agricultural may reduce property taxes to the extent the value of the land is reduced. However, property taxes are determined by the county tax assessor/collector.

What Land Trusts Do

A land trust is a local, regional, or national non-profit organization that protects land for its natural, recreational, scenic, historical, or productive value. Land trusts have varying conservation objectives; some work in specific geographic areas, and some concentrate on protecting different natural or cultural features.

Initially, the land trust works with the landowner to tailor the terms of the easement to protect the land's conservation value and meet personal and financial goals. Land trusts can also connect landowners with legal, tax, or natural resource professionals familiar with conservation easements.

Land trusts that accept conservation easements are responsible for monitoring that property and ensuring that the terms of the easement are followed. Representatives from the land trust make scheduled, usually annual, visits to the property to document the condition of the property and notify the landowner of any potential violation of the conservation easement. If the terms of the conservation easement are violated, the land trust can take legal steps to stop or correct the violation.

BRUCE REID

MISSISSIPPI RIVER TRUST

Forest management can be permitted on conservation easement land.

The land trust is responsible for the stewardship of the conservation easement for as long as the easement exists. A landowner must select an organization that can demonstrate that it has the financial resources and staying power to handle these responsibilities over the long term.

A land trust may also work with a landowner to develop a management plan to include flexible goals and objectives relating to the conservation of the property's natural and cultural features. Management plans, which should be updated periodically, are crucial for productive agricultural or recreational property or for property susceptible to invasive species.

AN EASEMENT WITH MISSISSIPPI LAND TRUST

When the MLT accepts an easement, we are responsible for monitoring that property and ensuring that the terms of the easement are followed.

Land trusts that accept conservation easements are responsible for monitoring that property and ensuring that the terms of the easement are followed. Representatives from the land trust make scheduled, usually annual, visits to the property to document the condition of the property and notify the landowner of any potential violation of the conservation easement. If the terms of the conservation easement are violated, the land trust can take legal steps to stop or correct the violation.

We request financial contributions to help us defray some of the costs involved in administering a conservation easement agreement. These contributions are tax-deductible to the extent allowable by law.

For the easements held to date, we have established an endowment of over $3,500,000 to pay the cost of monitoring. Landowners with an easement on their property will be required to donate to the endowment. All funds contributed to the fund will remain in it plus interest minus inflation.

Frequently Asked Questions

WHO MAY GIVE A CONSERVATION EASEMENT?

Any landowner of record may donate a conservation easement. If there is a lien holder on the property, the lien holder must accept and agree (subordinate) to the terms of the easement. Taxes are still paid on the property by the owner of record.

WHAT RIGHTS AND DUTIES DOES THE LANDOWNER RETAIN?

Except for the specific restrictions set forth in the conservation easement document, the landowner retains all other rights which were initially conveyed when the property was acquired. The land can be sold, leased, and/or transferred to heirs upon the death of the original owner.

Recreational activities such as hunting and fishing, timber management activities, and the use of other natural resources, such as minerals, are allowed as long as these activities are not restricted in the easement.

DOES MY PROPERTY QUALIFY FOR A CONSERVATION EASEMENT?

If your property is undeveloped, forested in native species, or has a minimum amount of agricultural or intense timber use, it will meet the basic qualifications for a conservation easement.

Most property with prairie, upland or bottomland hardwoods, mixed pine/hardwoods, or longleaf pine habitat types qualify for the development of a conservation easement.

DOES EVERY EASEMENT QUALIFY FOR AN INCOME TAX DEDUCTION?

No. To qualify as a charitable contribution, conservation easement donations must be perpetual, must be donated to a qualified organization (a non-profit land trust), and meet one of the "conservation purposes" tests outlined in the Internal Revenue Code (IRC). Easement donors should be aware that these contributions are subject to review by the IRS for several years.

DOES EVERY EASEMENT HAVE TO BE PERPETUAL?

For the donation to qualify for income and estate tax benefits the conservation easement must be perpetual and apply to all future owners. Some organizations may be willing to purchase conservation easements. Easements that are purchased can be designed for a limited period of years.

For example, the Wetland Reserve Easement (WRE), administered by the Natural Resources Conservation Service (NRCS), pays landowners for conservation easements on restored or existing wetlands that provide significant habitats for birds and other wildlife.

The Agricultural Land Easement (ALE), also administered by the NRCS, pays landowners for conservation easements on restored or existing grasslands that provide significant habitat for birds and other wildlife.

The Healthy Forests Reserve Program (HFRP), also administered by the NRCS, pays landowners for conservation easements to restore and protect rare forest types, such as longleaf pine, that contribute to the recovery of a declining, threatened, or endangered species.

WHAT ARE THE "CONSERVATION PURPOSES" RECOGNIZED BY THE INTERNAL REVENUE CODE?

The IRS Code Section 170(h) requires that conservation easement donations meet one or more of the following conservation purposes:

- protect relatively natural habitats of fish, wildlife, or plants
- preserve open space, including farms or forests, either for scenic enjoyment or in keeping with an adopted public policy
- keep land for public outdoor recreation or education, and/or
- preserve historically significant land or certified historic structures

The conservation purpose of most conservation easement donations in Mississippi is derived from the protection of open space or fish and wildlife habitat.

DOES A CONSERVATION EASEMENT GRANT PUBLIC ACCESS TO MY PROPERTY?

No. Landowners retain control of access to their property. They may allow access to specific groups or the public in their conservation easement, but landowners are not required to do so.

WHAT DOES "SIGNIFICANT" MEAN?

In addition to the basic conservation purpose that the IRS requires a landowner to meet, the IRS also requires that the conservation be significant.

Significant conservation includes land within the Black Prairie, Coastal Plain, Lower Mississippi River Alluvial Plain, land that is beneficial to the North American Wetlands Conservation Act, the North American Waterfowl Management Plan, the Environmental Monitoring and Assessment Program, the Partners in Flight Program, the Clean Water Act, the Endangered Species Act, the conservation provisions of the Farm Bill, and Mississippi's Comprehensive Wildlife Conservation Strategy.

CAN A CONSERVATION EASEMENT THAT PROTECTS OPEN SPACE IN A REAL ESTATE DEVELOPMENT QUALIFY FOR AN INCOME TAX DEDUCTION?

No tax deduction will be allowed if the donation is made under compulsion or in exchange for a benefit the landowner expects. Also, charitable income tax deductions for real estate developers are generally limited to the tax basis of the property. The property owner must be prepared to defend the appraisal of their deduction.

CAN I STILL SELL MY PROPERTY?

Yes. Property with a conservation easement can be bought, sold, and inherited. However, the conservation easement is tied to the land and binds all present and future owners to its terms and restrictions.

WHAT WILL A CONSERVATION EASEMENT MEAN FOR MY CHILDREN?

Future landowners, including family members, will abide by the terms of the conservation easement agreement and will continue the relationship with the organization that holds the easement.

A conservation easement may reduce estate taxes paid by heirs. Families should consider the trade-off between conservation goals, tax benefits resulting in reduced property value, and permanent land-use restrictions.

WHAT IF MORE THAN ONE PERSON OWNS THE PROPERTY?

All owners of a property must agree to the terms of the conservation easement before it can be granted legally.

CAN I STILL BUILD ON MY PROPERTY?

The landowner may retain specified development rights in a conservation easement agreement. For example, a conservation easement protecting a farm or ranch may allow construction compatible with agricultural operations and changes in crop selection or management practices. A conservation easement may specify the location, size, and type of one or more residences or other development on a property.

WHAT IF MY PROPERTY IS MORTGAGED?

For a conservation easement to qualify for an income tax deduction, the landowner must acquire a mortgage subordination agreement from the mortgage holder. With this document, the mortgage holder agrees to follow the terms of the conservation easement in the event of foreclosure.

WHAT IF I DON'T OWN THE MINERAL RIGHTS TO MY PROPERTY?

This is a complicated issue that should be discussed with professional advisors. However, a landowner who does not own the mineral rights to their property can qualify for income or estate tax benefits if ownership of the mineral rights was separated from the land before June 13, 1976, and remains separated today if the owner proves that the probability of surface mining occurring on the property is "so remote as to be negligible."

WHERE ARE CONSERVATION EASEMENTS RECORDED?

Like deeds or other easements, conservation easement documents are recorded with other land records in the county where the property exists.

WHAT RESTRICTIONS CAN BE INCLUDED IN A CONSERVATION EASEMENT?

Conservation easements restrict the future development of the property. However, they are flexible and may include or exclude almost any restricted use that is agreed to by the landowner and the conservation organization holding the easement.

For example, the easement can be so restrictive that it mandates that the land be left in its natural state. On the other hand, it is common for easements to allow for various activities such as farming, hunting and fishing, planting of food plots, and, in some cases, limited structural development.

CAN CONSERVATION EASEMENTS BE CHANGED OR REVOKED?

Because conservation easements qualifying under IRS regulations are designed to be permanent, landowners should assume that it will not be possible to revoke an easement. However, conservation easements may be amended if both the easement holder and the landowner agree to the terms of the change and if the IRS recognizes the easement's conservation purpose is not affected.

CAN A CONSERVATION EASEMENT BE DONATED BY WILL?

Yes. The landowner must contact the intended easement holder before conveying the easement by the will to ensure that the organization will accept the donation. If the easement qualifies under federal tax law, its value is subtracted from the landowner's taxable estate, reducing estate taxes for heirs.

CAN THE CONSERVATION EASEMENT BE PLACED ON JUST A PORTION OF A TRACT OF LAND, OR MUST IT BE PLACED ON THE ENTIRE PROPERTY?

An easement may be applied to an entire property or to any portion of it, depending upon the character of the land. It is not uncommon to have a portion of particular land ownership fronting a natural lake area, riverfront, or bottomland hardwood with associated wetland habitats. Generally, properties with the highest risk of development having the most desirable development characteristics carry the most advantageous tax benefits.

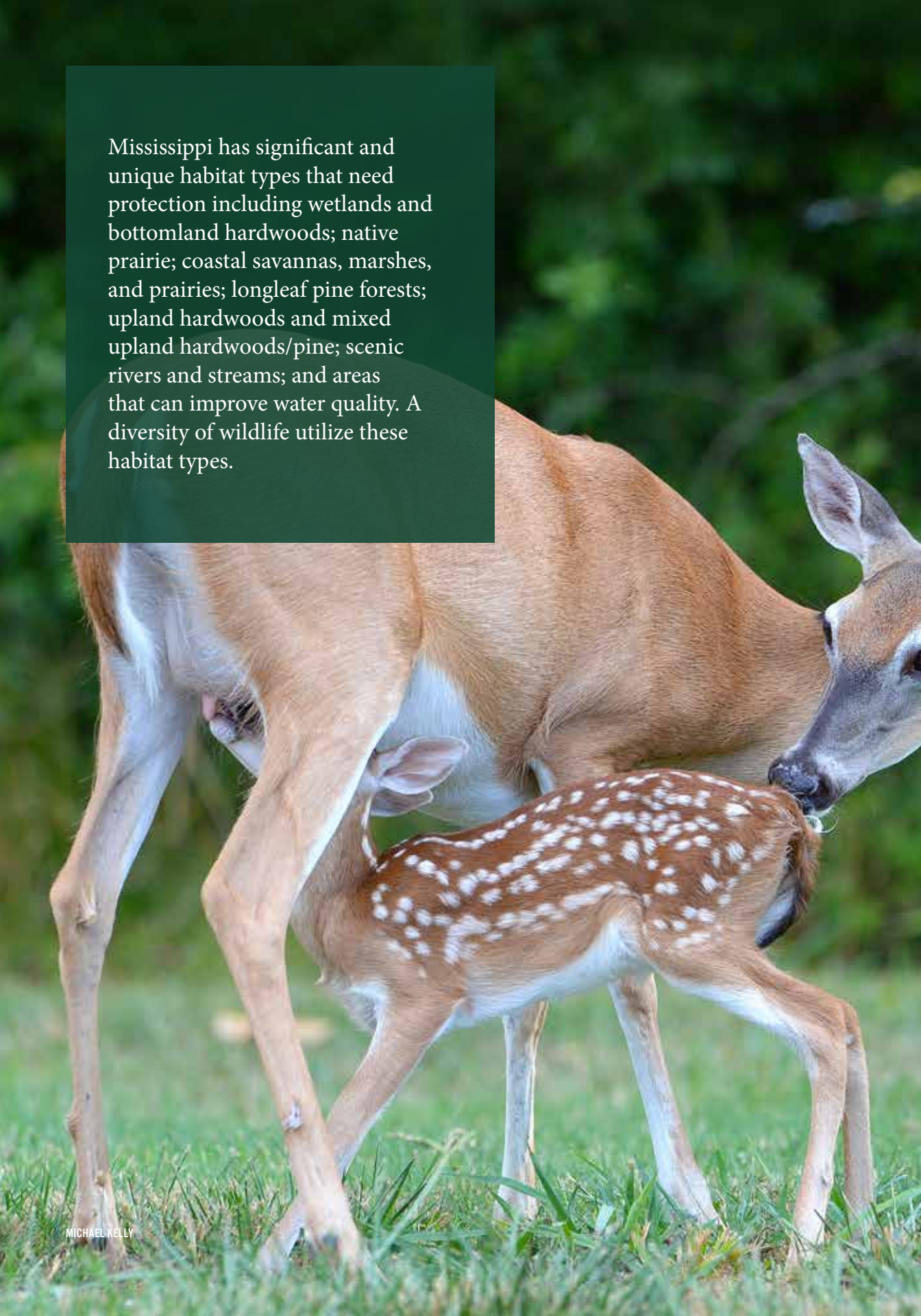
WHAT CAN A CONSERVATION EASEMENT MEAN TO A LANDOWNER?

By placing a conservation easement on a particular parcel of land, a property owner can be assured that the land will forever remain in a natural state, unaltered by humans. Paradoxically, a landowner may be rewarded personally and philosophically by the knowledge that protective covenants are in place to promote their specific conservation ethic while receiving immediate financial benefits through the tax advantages that accrue.

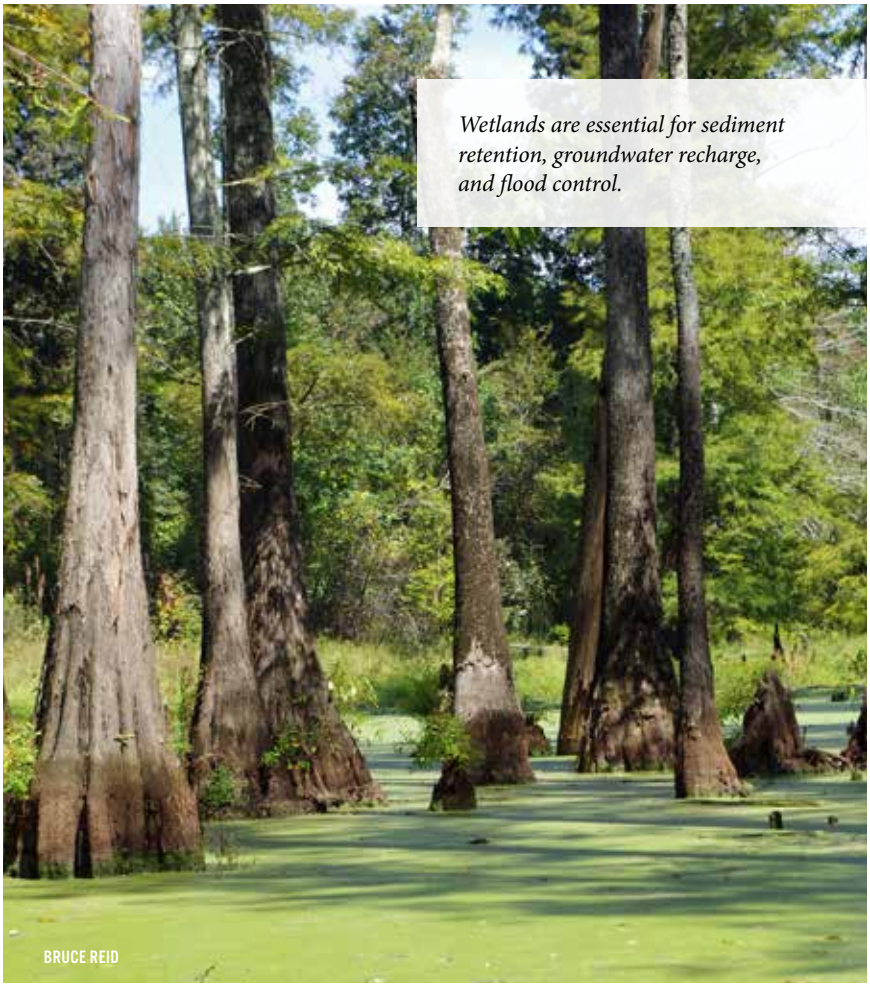
WHAT ARE THE FINANCIAL BENEFITS TO THE LANDOWNER?

A real estate appraiser experienced in the use of conservation easements will establish the conservation easement's value. The appraiser establishes the property's value with and without the easement. The difference between the restricted and unrestricted value of the property is the amount considered a charitable contribution for income tax purposes. The easement may also reduce the value of the property in the landowner's estate, thereby reducing the amount of estate taxes that will be paid.

Mississippi has significant and unique habitat types that need protection including wetlands and bottomland hardwoods; native prairie; coastal savannas, marshes, and prairies; longleaf pine forests; upland hardwoods and mixed upland hardwoods/pine; scenic rivers and streams; and areas that can improve water quality. A diversity of wildlife utilize these habitat types.



MICHAEL KELLY



Wetlands are essential for sediment retention, groundwater recharge, and flood control.

BRUCE REID

Significant Habitat to Protect

Mississippi has significant and unique habitat types that need protection. These habitats qualify for conservation easements:

- wetlands and bottomland hardwoods
- native prairie
- coastal savannas, marshes, and prairies
- longleaf pine forests
- upland hardwoods and mixed upland hardwoods/pine
- scenic rivers and streams
- areas that can improve water quality

WETLANDS

Wetlands are valuable for many reasons. They are host to rich wildlife and fish resources. They are also essential for sediment retention, groundwater recharge, and flood control.

Private landowners control three-fourths of the wetlands in the United States. These remaining wetlands provide critical habitat for waterfowl and other wetland-dependent wildlife.

Incentives such as the Wetland Reserve Easement (WRE) will compensate landowners for removing land from agricultural production and developing wildlife habitat, thus helping to increase the wetland-dependent wildlife population.

Existing wetlands or areas where the landowner desires to convert the site to wetlands qualify for conservation easements.

BOTTOMLAND HARDWOODS

Historically, low-lying forests were prominent in Mississippi. In the early 1800s, Thomas Nuttall described them as a "vast, trackless wilderness of trees, a dead solemnity...All is rude nature as it sprang into existence still preserving its primeval type, unclaimed exuberance." C.S. Sargeant, in 1884, reported that the lowlands of Mississippi "possessed a wealth of timber of the most valuable kinds in a surprising variety."

Sargeant describes the land eloquently, "Along the elevated ridges from the streams, the white oak, the willow oak, the shell-bar (sic) and mocker-hickories, the black walnut in great numbers, the yellow poplar and the sassafras large enough to furnish canoes of great size, the mulberry, the Spanish oak, the sweet and black gums are the principal forest trees, with undergrowth in the openings of dogwoods, various haws, crabapples, wild grapes, buck thorns, etc. In the forest covering the lower lands, which sloped back everywhere in the more or less saturated soil, here the sweet gum reaches its greatest size and here grows in great perfection the bitternut, the elms, hornbeams, white ash, boxelder, and red maples of enormous size. The honey locust, water oaks, and red and Spanish oaks are equally common. Here, among the smaller trees, the holly obtains its greatest development, with hornbeams and wahoo elms. At the same time, papaws, haws, and privets from the massive and dense undergrowth which interspersed with dense cane-brakes (sic) covers the ground under the large trees."

Over generations, many of these low-lying forested lands were cleared, changing the landscape. Yet, in some cases, these lands are not as productive for crops and may be better suited for timber production. Consequently, many landowners have become interested in planting these lands with bottomland hardwoods and protecting them.

Existing bottomland hardwoods or areas where the landowner desires to convert the site to bottomland hardwoods qualify for conservation easements.

NATIVE PRAIRIE

Grasslands are important both for the forage they provide for farming operations and for the habitat they provide for plant and animal communities.

MLT's native prairie initiative aims to help reverse the disappearance of native grasslands. We are interested in the restoration of native grasslands, which is particularly important in the Black Belt Prairie of Northeast Mississippi, the Jackson Prairie in East-central Mississippi, the prairies that remain in Tennessee and Kentucky, and the Coastal Prairie region of Louisiana. These grasslands once supported vast populations of bobwhite quail, wild turkey, and a variety of songbirds.

The initiative will permit grazing on the easement property. Haying is allowed after the nesting season for birds in the local area. Prohibitions are intended to prevent the cultivation of the soil for row crops and otherwise to break the soil to produce agricultural commodities.

COASTAL SAVANNAS, MARSHES, AND PRAIRIES

The MLT has also placed emphasis on protecting pine savannas and their associated pine scrub, forested swamps, and tidal marshes.

Marshes provide habitat for invertebrates, fish, amphibians, and many birds.

These habitat types have high rainfall, low flat topography, and clay soil with a hard subsurface pan leading to infertile, acidic, waterlogged soil.

Prior to European settlement, the vegetation of the Mississippi Gulf Coast mainly consisted of pine savannas, according to the U.S. Fish and Wildlife Service.

These savannas were kept open due to high fire frequency. Grasses like wiregrass provided much of the fuel. As humans began suppressing fire, pines and shrubs invaded and replaced the native savanna plants.

In the 1960s and 1970s, much of the remaining open savanna was converted to pine plantations, which disrupted the natural water regime. Less than 5% of open savanna remains in the Atlantic/Gulf Coastal Plain, making it one of the most endangered ecosystems in the country.

Savannas have one of the highest diversity of plants in North America. Many species of orchids and carnivorous plants can be found in savannas. The wetter areas of the savanna are often called pitcher plant bogs.

Forested swamps are found throughout pine savannas. Swamps infrequently burn because of the high humidity, standing water, moist fuel, and shelter from the wind.

Pine scrub is a "mixed-bag" classification that includes natural pine flatwoods and former pine savannas now overgrown with slash pine. Due to fire suppression, it also has numerous shrubs that choke out the native wildflowers and sedges.

Tidal marshes are covered by vast areas of sawgrass with herbaceous species intermixed along the edges. All these species are adapted to the saturated soils caused by incoming tides.

LONGLEAF PINE FORESTS

Over the last two centuries, the original 90 million acres of longleaf pine has declined to less than 40 million acres (U.S. Department of Agriculture).

This vital ecosystem provides valuable habitat to a wide array of wildlife. Over 30

Upland hardwoods and mixed upland hardwoods/ pine have nurtured the economy and culture of Mississippi for generations.

threatened and endangered species, such as the red-cockaded woodpecker, are dependent on the longleaf pine habitat.

Areas currently growing longleaf pine or areas where the landowner desires to convert the site to longleaf qualify for conservation easements.

UPLAND HARDWOODS AND MIXED UPLAND HARDWOODS/PINE

Upland hardwoods and mixed upland hardwoods/pine have nurtured the economy and culture of Mississippi for generations. In recent years, these forest types have been converted into pine plantations.

Additionally, population growth, high estate taxes, community sprawl, and other development activities have encouraged the conversion of these forests to non-forest and non-farm uses.

Land that will protect, restore, or enhance the integrity of upland hardwoods and mixed upland hardwoods/pine forests are desirable for conservation easements.

SCENIC RIVERS AND STREAMS

In 1999, the Mississippi Legislature passed a non-regulatory Scenic Rivers and Streams Program to work with landowners to promote buffers along stream banks. The goal of the Scenic Rivers and Streams Program is to preserve at least a part of the natural beauty and aesthetic values of some of Mississippi's rivers and streams.

The bill states, "To qualify as eligible, the stream must possess unique or outstanding, scenic, recreational, ecological, botanical, fish, wildlife, historic, or cultural values." In addition, the stream must be a public waterway and not have been channelized in the past 5 years.

The law designates six streams where reaches are available for scenic designation first. These include Black Creek, Buttahatchie River, Okatoma Creek, Strong River, the Upper Pearl River, and the Wolf River. Currently, only Black Creek, a federally designated wild and scenic river, has protection.

To protect, restore, or enhance the integrity of a river or stream, land in a conservation easement may include conservation buffer strips, riparian corridors, wetland enhancement and restoration, bottomland hardwood tree planting, and a variety of desirable erosion control practices for conservation easements.

Nominations for streams must be made to the Mississippi Department of Wildlife, Fisheries, and Parks and an advisory council consisting of farmers, landowners, businesspeople, government officials, conservationists, and recreational interests, such as canoeing and fishing groups.

AREAS THAT CAN IMPROVE WATER QUALITY

Mississippi has abundant rainfall, finely textured soils, and intensive agricultural and forest production. These factors add up to

substantial non-point source pollution (NPS) problems. Relatively high levels of nutrients, siltation, and organic enrichment (low dissolved oxygen) originating primarily from agricultural and forest production NPS are believed to be present in most ponds, lakes, and rivers in Mississippi.

Eroding soil on poorly managed fields and forests transports sediments, organic residues, herbicides, pesticides, and fertilizer residues to downstream water resources. These pollutants can cause fish and aquatic insects to die, cause algal blooms, and negatively impact the food web in a body of water.

Soil losses and the movement of other runoff-borne pollutants are significant reasons for the degradation of riparian and wetland systems in the basins of Mississippi.

Conservation easements are being used throughout the nation in watersheds to support the Best Management Practices (BMPs) for wetland and riparian area restoration and protection. Emphasis is on sites where intense population pressure creates many competing land uses. In this area, the preservation of fish and wildlife habitat and undeveloped corridors along streambeds is an extremely valuable by-product of easements acquired primarily to improve water quality.

Easements may support wetland and riparian restoration when eligible as a BMP for controlling NPS pollution. Wetland and riparian area restoration are eligible BMPs in the following situations:

- cultivated organic soils with channel drainage systems discharging to a stream or tributary
- pastured wetlands adjacent to streams or tributaries
- prior converted wetlands or farmed wetlands downslope or upslope from fields identified as critical upland sediment sources

Conservation easements using BMPs for forestry practices are also desirable. Eligible BMPs will be based on the following principles as described in the "BMPs For Forestry" by the state forestry commission:

- Do not allow surface water runoff from any type of soil disturbance to run directly into a watercourse.
- Maintain the integrity of all streambeds and banks.
- Do not leave debris of any type in streambeds.
- Do not spray chemicals directly into the water or allow chemicals to degrade surface or groundwater.
- Leave streamside management zones (SMZs) along watercourses.
- Provide for rapid revegetation of all denuded areas through natural processes supplemented by artificial revegetation where necessary.

Conservation easements are typically placed on native prairie, upland pine, upland hardwoods, mixed hardwoods and pine, longleaf pine, or bottomland hardwoods according to the native species occurring in the area in question. Conservation easements will not be placed on lands where more than 50% of the easement area will remain in agricultural production, and, even then, no-till or minimum-till system alternatives to more conventional tillage systems that result in more significant soil erosion and sediment discharge will be required and incorporated in the easement document.

The objectives of NPS wetland and riparian area restoration and protection easements complement other state and federal programs. Wetlands in Mississippi are fairly well protected from development through statewide zoning but are less protected from agricultural impacts. The easement program provides an economically viable alternative to the agricultural use of wetland areas.

This initiative will address the significant surface water pollution problems in Mississippi's basins through conservation easements that restore or protect wetlands and riparian areas.

The MLT works exclusively to preserve Mississippi's vast fish and wildlife habitat.

Support

The MLT, a charitable 501(c)(3) organization, is Mississippi's largest land trust. It works exclusively to preserve Mississippi's vast fish and wildlife habitat, working cooperatively with landowners, government agencies and the public.

The MLT is not alone in its efforts to protect working lands. The Trust is primarily funded by charitable donations made by individuals and foundations that support our work. These generous donations are enabling the Trust to

1. Conserve tens of thousands of acres of private fish and wildlife habitat throughout Mississippi
2. Encourage sustainable forestry
3. Promote policy initiatives that offer private landowners opportunities to practice good land stewardship

Be part of something great for Mississippi! Future generations will be proud of your role. Contributions from sportsmen, individuals, corporations, foundations, and the conservation community are essential to the success of the Trust's conservation initiatives. These efforts affect the health and well-being of all citizens in Mississippi by improving the quality of life through protecting, restoring, and enhancing this great region's fish, wildlife, and plant resources.

Make a tax-deductible donation today or contact the MLT for additional information on philanthropic options that can maximize tax benefits through gifts of appreciated stock or land. The success and achievements of the MLT will be determined by your participation.

Contributions from sportsmen, individuals, corporations, foundations, and the conservation community are essential to the success of the Trust's conservation initiatives.

MICHAEL KELLY

More Information

Landowners interested in learning more about conservation easements have several resources to assist them.

MISSISSIPPI LAND TRUST

The Mississippi Land Trust can answer questions about conservation easements.

Mississippi Land Trust
Main Office
P.O. Box 23
Stoneville, MS 38776
Phone: 662.820.9774
Fax: 662.686.4780
Web: www.misslandtrust.org

Northeast Mississippi
Field Office
P.O. Box 187
Amory, MS 38821
Phone: 662.256.4486

South Mississippi
Field Office
P.O. Box 16537
Hattiesburg, MS 39404
Phone: 601.264.6010
Fax: 601.264.6314

THE LAND TRUST ALLIANCE

The Land Trust Alliance, a national organization for land trusts, publishes books and other materials related to private land conservation. A description of several of these publications is listed in the appendices.

The Land Trust Alliance
1660 L Street, NW, Suite 1100
Washington, DC 20036
Phone: 202.638.4725
Fax: 202.638.4730
Web: www.landtrustalliance.org

LEGAL AND TAX ADVISORS

Landowners should discuss the potential advantages and disadvantages of conservation easements with their own legal and tax advisors.

Appendices

APPENDIX I: CONTENT OF A CONSERVATION EASEMENT

Parties: Grantor (landowner) and Grantee (easement holder)

Date of Conveyance

Recitals ("whereas" clauses)

Title representation (assures that grantor owns the property)

Conservation values of the property

Legal description of property

Documentation of "pre-easement characteristics" of property

Continuation of existing uses

Conveyance of rights to protect conservation values to grantee

Qualifications of grantee to hold the easement

Grant (transfer of property interest)

- Consideration: nominal dollar amount or gift language
- Citation of statutory authority
- Duration: perpetual

Provisions

1. Purpose (only uses consistent with protection of conservation values are permitted)
2. Ingress and Egress (access to property by grantee)
3. Prohibited Land Uses

   The three methods for defining prohibited land use are:

   Exclusive (any land use not expressly prohibited is permitted)

   Unreserved (any land use not expressly reserved is prohibited)

   Inconsistent (any land use inconsistent with the easement's purpose is prohibited)
4. Reserved Rights (the landowner's rights which are reserved for possible future use)
5. Access (public is typically denied access)
6. Amendment (if mutually agreeable between easement holder and landowner at the time, certain provisions of easement may be modified in the future as long as original intent is achieved)
7. Assignment (grantee retains right to transfer easement to another eligible holder)
8. Subordination (if property is mortgaged, the mortgage holder must guarantee that it will uphold easement provisions in the event of foreclosure)
9. Subsequent transfers (easement "runs with the land," i.e., provisions bind all future landowners in perpetuity, even if the property is sold to another)
10. Recordation (easement documents recorded in county in which the property is located)
11. Successors (easement "runs with the land," i.e., provisions bind all future landowners in perpetuity, even if property is inherited by another)

MICHAEL KELLY

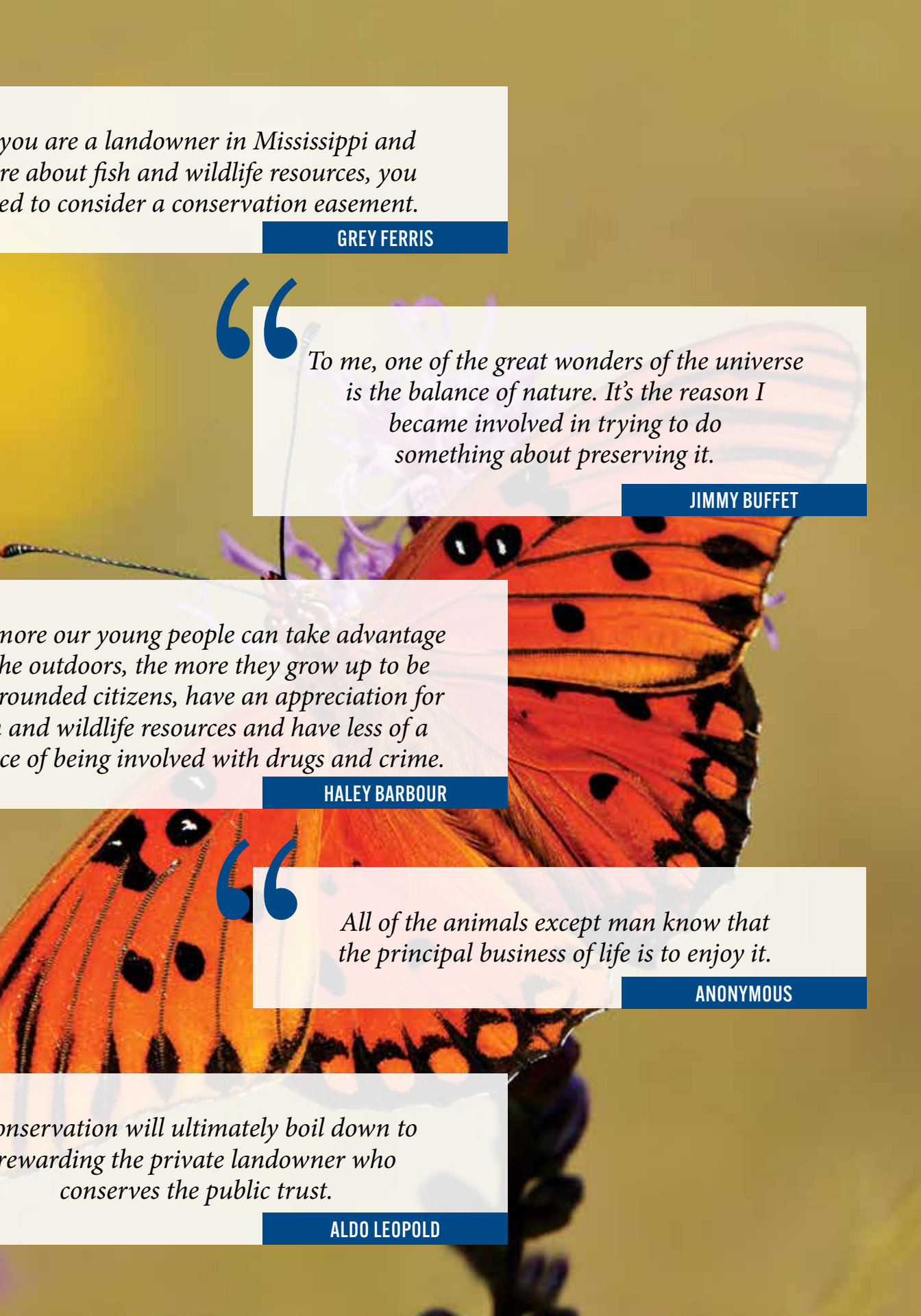
APPENDIX II: BOOKS ON CONSERVATION EASEMENTS

Preserving Family Lands: Essential Tax Strategies for the Landowner by Stephen Small.
Preserving Family Lands: Book II, More Planning Strategies for the Future by Stephen Small.
Preserving Family Lands: Book III, NewTax Rules and Strategies and a Checklist by Stephen Small.

Available from
Preserving Family Lands
P.O. Box 961241
Boston, Massachusetts 02196-1241
Ph: 617.357.1644

The Federal Tax Law of Conservation Easements by Stephen Small.
The Conservation Easement Handbook (with model conservation and historic easements) by Elizabeth Byers and Karin Marchetti Ponte.
A Tax Guide to Conservation Easements by C. Timothy Lindstrom.

Available from
The Land Trust Alliance
1660 L Street NW, Suite 1100
Washington D.C. 20036
Ph: 202.638.4725



you are a landowner in Mississippi and re about fish and wildlife resources, you ed to consider a conservation easement.

GREY FERRIS

To me, one of the great wonders of the universe is the balance of nature. It's the reason I became involved in trying to do something about preserving it.

JIMMY BUFFET

more our young people can take advantage he outdoors, the more they grow up to be rounded citizens, have an appreciation for and wildlife resources and have less of a ce of being involved with drugs and crime.

HALEY BARBOUR

All of the animals except man know that the principal business of life is to enjoy it.

ANONYMOUS

onservation will ultimately boil down to rewarding the private landowner who conserves the public trust.

ALDO LEOPOLD

MISSISSIPPI Land Trust

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